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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,834	02/10/2004	Carlos Longo Areso	G80-049 US	1646
21706 7590 06/10/2009 NOTARO & MICHALOS P.C. 100 DUTCH HILL ROAD SUITE 110 ORANGEBURG, NY 10962-2100			EXAMINER STULIL, VERA	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 06/10/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/775,834

Applicant(s)

ARESO, CARLOS LONGO

Examiner

VERA STULII

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The Examiner for this application has changed to Vera Stulii (AU 1794).

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/04/2009 has been entered.

Claim Objections

Claim 7 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form. It is not clear how claim 7 further limits claim 4 by recitation of a meat composition submitted to additional smoking process and composition not submitted to the additional smoking process. Thus claim 7 recite combination of two mutually exclusive possibilities, which does not further limit claim 4.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4 and 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilhoit (US5,573,797) in view of Millis et al (US5,286,506).

In regard to claim 1, Wilhoit discloses a method for protecting meat products, comprising applying an antibacterial composition on an inside surface of a cellulosic casing used in sausage production to prevent an appearance and growth of gram-positive bacteria (including *Listeria*) in said meat products (Abstract, Col. 3 lines 40-52; Col. 8 lines 46-56; Col. 12 lines 24-29).

Wilhoit discloses various antimicrobial compositions to inhibit the growth of *Listeria* bacteria, but is silent as to the hop acids or their derivatives as antimicrobial agents that prevent the growth of *Listeria*. Millis et al disclose a method for protecting meat products, comprising applying a hop acid to the meat food product as an antibacterial composition to prevent an appearance of *Listeria* and other bacteria (Abstract; Col. 1 lines 22-25, 40-45, 50-53; Col. 3 lines 26-29). Since Wilhoit discloses a method for protecting meat products, comprising applying an antibacterial composition on an inside surface of a cellulosic casing used in sausage production to prevent an appearance and growth of *Listeria* in the meat products, and Millis et al discloses beta-acid (hop acid) as an effective antimicrobial agents that also prevents appearance and growth of *Listeria*, one of ordinary skill in the art would have been motivated to modify Wilhoit and to substitute antimicrobial agent disclosed by Wilhoit with beta-acid as disclosed by Millis. One of ordinary skill in the art would have been motivated to modify Wilhoit and to substitute one conventional antimicrobial agent with another conventional antimicrobial agent (beta-acid). One of ordinary skill in the art would have been

motivated to do so, since both references disclose treatment of meat product with antibacterial agents to prevent growth of *Listeria* bacteria. In regard to the amount of hop acids used, it is noted that Millis et al discloses aqueous solution of beta-acid containing from 6 to 100 ppm of beta-acids with preferred range from 15 to 50 ppm (Col. 2 lines 39-40). Thus, one of ordinary skill in the art would have been motivated to modify Wilhoit and to employ hop acids in the amount as taught by Millis et al. Further in this regard, it is noted that the particular amount of hop acid would depend on the particular type of acid, concentration, desired time period for the bacterial reduction, etc.

In regard to claim 2, Wilhoit and Millis et al. discloses prevention of growth of *Listeria*.

In regard to claim 3, Wilhoit discloses a cellulosic casing for meat products, comprising an internal coating comprising an antibacterial solution (Abstract; Col. 1 lines 22-25, 40-45, 50-53; Col. 3 lines 26-29). For the reasons stated above in regard to claim 1, one of ordinary skill in the art would have been motivated to modify Wilhoit and to substitute antimicrobial agent disclosed by Wilhoit with beta-acid as disclosed by Millis. For the reasons stated above in regard to claim 1, one of ordinary skill in the art would have been motivated to modify Wilhoit and to employ hop acids in the amount as taught by Millis et al. Since Millis et al disclose application of hop acid antibacterial agent alone as an effective antibacterial agent, one of ordinary skill in the art would have been motivated to do so as well in order to reduce the cost of the final product by not including additional unnecessary antimicrobial agents.

In regard to claims 4 and 11, Wilhoit discloses meat product, comprising a cellulosic casing for meat products, comprising an internal coating comprising an antibacterial solution (Abstract; Col. 1 lines 22-25, 40-45, 50-53; Col. 3 lines 26-29). For the reasons stated above in regard to claim 1, one of ordinary skill in the art would have been motivated to modify Wilhoit and to substitute antimicrobial agent disclosed by Wilhoit with beta-acid as disclosed by Millis. For the reasons stated above in regard to claim 1, one of ordinary skill in the art would have been motivated to modify Wilhoit and to employ hop acids in the amount as taught by Millis et al. Since Millis et al disclose application of hop acid antibacterial agent alone as an effective antibacterial agent, one of ordinary skill in the art would have been motivated to do so as well in order to reduce the cost of the final product by not including additional unnecessary antimicrobial agents.

In regard to claim 7, Wilhoit discloses meat product comprising any meat composition, which may or may not have been submitted to an additional smoking process (Examples 29-43; examples 44-55).

In regard to claim 8, Wilhoit discloses a method for applying a solution to a meat product, comprising producing a solution containing antibacterial agent, applying the solution to an inside of a cellulosic casing, filling the cellulosic casing with meat paste that is the meat product, and heating the meat product so that the solution is transferred to the meat surface (Abstract; Col. 1 lines 22-25, 40-45, 50-53; Col. 3 lines 26-29). For the reasons stated above in regard to claim 1, one of ordinary skill in the art would have been motivated to modify Wilhoit and to substitute antimicrobial agent disclosed by Wilhoit with beta-acid as disclosed by Millis. For the reasons stated above in regard to

claim 1, one of ordinary skill in the art would have been motivated to modify Wilhoit and to employ hop acids in the amount as taught by Millis et al. Since Millis et al disclose application of hop acid antibacterial agent alone as an effective antibacterial agent, one of ordinary skill in the art would have been motivated to do so as well in order to reduce the cost of the final product by not including additional unnecessary antimicrobial agents.

In regard to claim 9, Wilhoit discloses removing the cellulosic casing of the meat product Col. 10 lines 35-37).

In regard to claim 10, Wilhoit discloses further smoking the meat product (Col. 31 lines 26-31).

Response to Arguments

Applicant's arguments filed January 22, 2009 have been fully considered but they are not persuasive. On page 6 of the Reply to the Office action mailed October 20, 2009 Applicant states that Millis et al teaches away, by disclosing that the increased amount of beta-acid effect the flavor of food product. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., flavor of the food product) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further in this regard, it is noted that Millis et al discloses aqueous solution of beta-acid containing from 6 to 100 ppm of beta-acids with preferred range from 15 to 50 ppm (Col. 2 lines 39-40). Thus, one of ordinary skill in the art would have been motivated to modify Wilhoit and to employ hop

acids in the amount as taught by Millis et al. Further in this regard, it is noted that the particular amount of hop acid would depend on the particular type of acid, concentration, desired time period for the bacterial reduction, etc.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/
Primary Examiner, Art Unit 1794

VS